

## **REMARKS**

### **Status of the Claims**

Claims 1-11 are pending in this application. Claims 1 and 5 are independent.

Reconsideration of this application is respectfully requested.

### **Rejections under 35 U.S.C. § 103**

#### **A. Claims 1-8 and 10**

Claims 1-8 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Onoe et al. (U.S. Patent Application Publication No. 2005/0163130, hereinafter “Onoe”) in view of Enns et al. (U.S. Patent Application Publication No. 2006/0098669, hereinafter “Enns”). This rejection is traversed.

The outstanding final Action essentially repeats (only the reference to Fig. 5 is omitted) the clearly erroneous assertion of the previous Office Action of February 17, 2011, that:

Onoe et al. discloses a transmission device (transmitter for performing packet communication, ¶ [0032], page 1, lines 2-5) conducting communication with predetermined quality ensured, comprising:

...  
a determination unit (Fig. 5, relay node detects the packet identifier, ¶ [0015], page 2, lines 4-5) organizing a set of packets having the same packet header as a packet group according to a classified result by said classification unit, and determining whether to be transmitted with a bandwidth guaranteed according to a bit rate of the packet group (packet identifier from the packet header decides the related packet is guaranteed in bandwidth and transfer the related packet in a bandwidth set at a bandwidth speed of the bandwidth guaranteed packet, ¶ [0015], page 2, lines 5-11)  
...

MPEP § 707.07(f) notes that “[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.” In the last response, it was pointed out (at page 3 thereof) that:

To whatever extent that ¶ [0032] of Onoe discloses a transmitter device, this transmitter device is clearly not taught to include the separately recited relay nodes that are outside the transmitter device on “a route for packet transfer.” The outstanding Action appears to ignore that claim 1 requires that the transmitter device must include the determination unit. Thus, the reliance on the Fig. 5 relay

nodes that are outside of the transmission device as readable on the claim 1 determination unit is a clear error in fact finding.

Furthermore, to whatever extent that Onoe teaches using a “guaranteed bandwidth” it is based on the packet identifier from the packet header determining which guaranteed bandwidth queue (Qa, Qb, or Qz) is used at the repeater node. As noted above, the “repeater node” is not a part of the transmitter device of ¶ [0032] of Onoe, contrary to the requirement of the present claims. In addition, the packet identifier from the packet header cannot be reasonably equated to the claimed “request unit” as further apparently asserted in the outstanding Action.

Rather than taking note of these specific arguments and answering the substance of them, page 13 of the outstanding final Action condenses all of the many points raised in traversing the rejection at pages 3-4 of the response filed May 12, 2011, into a statement of repeating some of the limitations of claim 1 (as to “organizing a set of packets having the same packet header as a packet group according to a classified result by said classification unit, and determining whether to be transmitted with a bandwidth guaranteed according to a bit rate of the packet group,” and “requesting a bandwidth control device to reserve a bandwidth for a packet group determined to be transmitted with a bandwidth guaranteed [by said determination unit]”) and notes that it has been argued that these limitations are not taught by Onoe or Enns. What the outstanding Action ignores is a response to the many specific reasons noted at pages 3-4 of the response filed May 12, 2011, that point out why Onoe or Enns cannot be reasonably said to teach these claim 1 limitations.

Similarly, the arguments offered at pages 4-5 of the response filed May 12, 2011, as to independent claim 5 are condensed into the argument that there is no teaching or suggestion of the claim 5 requirement for “buffer capacity required when a packet group is to be transmitted in a specific bandwidth, performing the calculation with the bandwidth changed, deriving a relationship between a required bandwidth and a required buffer capacity, and determining whether the packet group is a packet group to be transmitted with a bandwidth guaranteed from said relationship” in the relied upon references. Noticeable by its absence is the point made (in the paragraph bridging pages 4 and 5 of the response filed May 12, 2011) as to claim 5 “that the Onoe transmitter device is clearly not taught to include the separately recited relay nodes that are outside the transmitter device on ‘a route for packet transfer.’”

Also conspicuous by its absence is the reply to the point made at the bottom of page 5 of the response filed May 12, 2011, that:

Even if it can be said that ¶ [0015] and ¶ [0018] of Onoe suggest a buffer for each queue, and ¶ [0011] of Onoe teaches that “packets indicated by bandwidth guarantee of data 100 and 150 are represented by numerals proportional to the guaranteed bandwidth,” as urged in the paragraph bridging pages 8 and 9 of the outstanding Action, there is absolutely no reasonable teaching or suggestion to be found in these disjointed teachings pointing to the above-noted independent claim 5 “determination unit” determining the above-noted “buffer capacity required when a packet group is to be transmitted in a specific bandwidth” in the manner specified (by “performing the calculation with the bandwidth changed, deriving a relationship between a required bandwidth and a required buffer capacity, and determining whether the packet group is a packet group to be transmitted with a bandwidth guaranteed from said relationship”).

Instead of taking note of the specific arguments at pages 3-7 and answering the substance of these specific arguments, the paragraph bridging pages 13 and 14 of the outstanding final Action simply notes operations performed by the relay node that has been repeatedly pointed out to be outside the Onoe transmitter device on “a route for packet transfer” and that these relay node operations cannot be said to be performed by the claimed “determination unit” that is recited as being included as a part of the claimed “transmission device.”

As the PTO reviewing Court has observed, “the name of the game is the claim,” *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USPQ 1523, 1529 (Fed. Cir. 1998), citing Giles Sutherland Rich, *Extent of Protection and Interpretation of Claims—American Perspectives*, 21 Int’l Rev. Indus. Prop. & Copyright L, 497, 499 (1990) (“The U.S. is strictly an examination country and the main purpose of the examination, to which every application is subjected, is to try to make sure that what each claim defines is patentable.”) Accordingly, the Examiner commits clear error by failing to properly treat the claimed invention.

Accordingly, reconsideration and withdrawal of the rejection of independent claims 1 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Onoe in view of Enns are respectfully requested.

Furthermore, as claims 2-4 and 10 depend directly or indirectly from independent claim 1 while claims 6-8 depend directly or indirectly from independent claim 5, these dependent claims are respectfully submitted to be improperly rejected under 35 U.S.C. § 103(a) as being

unpatentable over Onoe in view of Enns for at least the same reason as noted above as to parent independent claims 1 and 5.

Accordingly, reconsideration and withdrawal of the improper rejection of dependent claims 2-4, 6-8, and 10 under 35 U.S.C. § 103(a) as being unpatentable over Onoe in view of Enns is also respectfully requested.

**B. Claims 9 and 11**

Claims 9 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Onoe in view of Enns in further view of Rogers (U.S. Patent Application Publication No. 2001/0036181). This rejection is traversed.

Rogers is cited as to the subject matter added by claims 9 and 11 and does not cure the deficiencies noted above as to the reliance on Onoe in view of Enns with respect to parent independent claim 1. Accordingly, claims 9 and 11 patentably define over the applied references for at least the same reason that parent independent claim 1 does. Thus, reconsideration and withdrawal of this improper rejection of claims 9 and 11 under 35 U.S.C. §103(a) as being allegedly unpatentable over Onoe in view of Enns in further view of Rogers are respectfully requested.

**Conclusion**

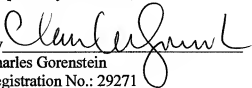
As all of the stated grounds of rejection have been properly traversed, it is respectfully requested that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Raymond F. Cardillo, Jr., Registration No. 40440, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

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Respectfully submitted,

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